

## Consultation on changes to DC bulk transfers without consent

Alert | 31 October 2017



### Introduction

Recognising that the current legislation's drafting is causing problems in practice, the DWP has issued a [consultation](#) to seek views on draft regulations ("the Regulations") to simplify requirements for DC to DC bulk transfers without consent.

### Key points

- Under the proposals, the current safeguards applicable to transfers without consent would be removed and replaced with new member protections.
- In particular, the DWP proposes that members who are protected by the default fund charge cap in their current scheme should remain subject to such protection following any transfer without consent, whether between schemes or between funds or arrangements.
- The proposed changes will not apply to DB schemes or to DC schemes with guarantees.

### Background

On 20 December 2016, the DWP published a [call for evidence](#) seeking views on how the current provisions on the bulk transfer of DC pensions without member consent, in particular from occupational and stakeholder pension schemes, could be improved. (See our [Alert](#) for details.)

### DC to DC bulk transfers

Under current legislation, a scheme may undertake a bulk transfer without consent provided the following conditions (which are intended to ensure member protection) are met:

- an actuary must certify that each member's rights in the receiving scheme will be "broadly, no less favourable" than the rights to be transferred ("the scheme quality condition")
- the transferring and receiving schemes both relate to persons who are or have been in employment with the same employers; or the transferring and receiving schemes relate to persons in employment with different employers and the transfer is either a consequence of a financial transaction between the employers or the employers are related for the purposes of the legislation ("the scheme relationship condition").

Employers will be related for the purposes of the legislation where, for example, they are part of the same corporate group.

Schemes often take advantage of the bulk transfer provisions where, for example, a company wishes to consolidate its pension arrangements or to transfer its employees to a master trust. In such cases, seeking consent from the entire membership will often be very difficult, particularly in relation to deferred members.

The pensions industry has informed the Government that the current arrangements for transfers without member consent are complex to apply to DC arrangements (as they were originally drafted with DB schemes in mind) and a key obstacle to DC scheme consolidation.

## Proposals

The DWP recognises that the changes to the pensions landscape, in particular the prevalence of DC schemes, have made the tests for bulk transfers without consent less meaningful. It therefore proposes to simplify the process for “pure” occupational DC schemes (those which provide money purchase benefits without a guarantee) by removing both the scheme quality and the scheme relationship conditions.

## Member protections

### New conditions

Under the Regulations, it will be possible to make a bulk transfer without consent from an occupational DC scheme:

- to an authorised master trust (which, by definition, will have to meet prescribed minimum standards in respect of governance and financial sustainability, see our [Alert](#) for details) or
- to another occupational DC scheme, provided that the transferring trustees have obtained and considered the written advice of a “suitably qualified professional” who is “independent” of the receiving scheme.

In defining the “suitably qualified professional”, the DWP have adopted the same terminology as that used for an adviser who trustees are required to consult when setting their SIP, namely, “a person who is reasonably believed by the trustees to be qualified by his or her ability in, and practical experience of, financial matters, and to have the appropriate knowledge and experience of the management of the investments of schemes such as the transferring and receiving schemes”. The DWP anticipates that many schemes will want to use the same person to fulfil both functions, although this will not be required.

In determining that the consultant is independent, the trustees must take account of whether the person:

- is, or has in the last five years been, a director, manager, partner or employee of a firm providing advisory, administration, investment or other services in respect of the receiving scheme, or is or has been connected to someone providing such services, and
- receives any payment or other benefit from a service provider.

### Charge cap protection

Where the transferring members are protected by the default fund charge cap (see our [Alert](#) for details), the DWP proposes that the receiving scheme will be required to continue to apply the charge cap in respect of those members. It is also consulting on the policy that any funds into which members protected by the cap

are switched without making an active choice should be subject to the cap.

### Trustee duties

The DWP notes that, in any case, the transferring trustees will need to undertake sufficient due diligence to satisfy themselves that the transfer is in their members' interests. However, it is considering whether there is a need for it to develop guidance on how to review the suitability of a receiving master trust.

## Other issues

Having considered the evidence, the DWP has decided there is no need for change in relation to stakeholder pensions.

TPR is currently working with HMRC and pension providers "to facilitate a consistent approach to winding up DC orphaned schemes and to help ensure that the members of such schemes receive their benefits when they fall due". The DWP has therefore opted not to take any action in relation to such schemes at this time, but will keep the issue under consideration.

## Next steps

The consultation closes at 5pm on 30 November 2017. The Regulations are intended to come into force with effect from 6 April 2018, subject to Parliamentary approval.

Sacker & Partners LLP  
20 Gresham Street  
London EC2V 7JE  
T +44 (0)20 7329 6699  
E [enquiries@sackers.com](mailto:enquiries@sackers.com)  
[www.sackers.com](http://www.sackers.com)

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should speak to your usual Sackers contact. © Sacker & Partners LLP October 2017